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7 ABDUL NEVAREZ, et al.,  
8 Plaintiffs,  
9 v.  
10 FORTY NINERS FOOTBALL  
11 COMPANY, LLC, et al.,  
12 Defendants.

Case No. 16-cv-07013-HSG

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**ORDER GRANTING MOTION FOR  
GOOD FAITH SETTLEMENT  
DETERMINATION**

20 Re: Dkt. No. 454

21 Pending before the Court is the application for good faith settlement determination filed by  
22 Third-Party Defendant, Turner/Devcon, a Joint Venture (“TDJV”). Dkt. No. 454 (“Mot.”). TDJV  
23 seeks approval of a settlement agreement under which it agrees to pay \$6,000,000 and provide  
24 additional construction work on Levi’s Stadium in exchange for a bar on any additional claims for  
25 equitable indemnity or contribution. *Id.* at 2. For the reasons below, the Court **GRANTS** the  
26 motion for good faith settlement determination.

27 **I. BACKGROUND**

28 The current parties to this indemnification action are the Forty Niners Football Company,  
LLC and related entities, who own and operate Levi’s Stadium, and TDJV, the contractor who  
built Levi’s Stadium. The underlying case was a putative class action lawsuit filed by Plaintiffs  
Abdul Nevarez, Priscilla Nevarez, and Sebastian Defrancesco (collectively “Plaintiffs”) against  
the Forty Niners Football Company, LLC, and six other defendants (collectively “Defendants”).<sup>1</sup>

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<sup>1</sup> Plaintiffs filed their complaint against Forty Niners Football Company, LLC, a Delaware Limited Liability Company; Forty Niners SC Stadium Company, LLC, a Delaware Limited Liability Company; National Football League; City of Santa Clara; Santa Clara Stadium Authority; Ticketmaster Entertainment, Inc.; and Forty Niners Stadium Management Company, LLC. *See* Dkt. No. 78.

1 Dkt. No. 78 ¶ 1. Plaintiffs alleged that the configuration of Levi's Stadium and its related  
2 facilities, and their ticketing policies, deny full and equal access to individuals with mobility  
3 disabilities and to their companions, in violation of Titles II and III of the Americans with  
4 Disabilities Act of 1990, and California's Unruh Civil Rights Act. *Id.* ¶ 3.

5 Five Defendants ("Third-Party Plaintiffs") subsequently filed a third-party complaint  
6 against TDJV, the general contractor for Levi's Stadium. Dkt. Nos. 107 ¶ 12, 454 at 7. That  
7 complaint alleged equitable and express contract indemnity and requested: 1) a determination of  
8 TDJV's negligence or fault, 2) monetary relief for the cost of the suit, 3) attorneys' fees, and 4)  
9 any other relief deemed proper by the court. Mot. at 6. After settling the underlying case with  
10 Plaintiffs, the parties then negotiated a settlement of the Third Party Complaint. *Id.* Under that  
11 agreement, TDJV will pay Third-Party Plaintiffs \$6,000,000 and conduct additional construction  
12 work in Levi's Stadium. *Id.* The Settlement Agreement is conditioned on this Court's finding that  
13 it was made in "good faith" pursuant to California Code of Civil Procedure Section 877.6. *Id.* §  
14 2.1.

## 15 **II. DISCUSSION**

16 TDJV requests an order determining that the Settlement Agreement was made in good  
17 faith pursuant to California Code of Civil Procedure Section 877.6. Mot. at 17.

18 Section 877.6 authorizes a court to determine whether a settlement between the plaintiff  
19 and one or more defendants was made in good faith in an action in which it is alleged that "two or  
20 more parties are joint tortfeasors or co-obligors on a contract debt[.]" Cal. Civ. Proc. Code §  
21 877.6. "A determination by the court that the settlement was made in good faith shall bar any  
22 other joint tortfeasor or co-obligor from any further claims against the settling tortfeasor or co-  
23 obligor for equitable comparative contribution, or partial or comparative indemnity, based on  
24 comparative negligence or comparative fault." *Id.* § 877.6(c).

25 The California Supreme Court has explained that a settlement is made in "good faith" if it  
26 is "within the reasonable range of the settling tortfeasor's proportional share of comparative  
27 liability for the plaintiff's injuries," taking into account the facts and circumstances of the  
28 particular case. *See Tech-Bilt, Inc. v. Woodward-Clyde Associates*, 38 Cal. 3d 488, 499 (1985).

1 When determining whether a settlement has been entered into in good faith, a court considers the  
2 following factors: (1) a rough approximation of the plaintiff's total recovery and the settlor's  
3 proportionate liability; (2) the amount paid in settlement; (3) a recognition that a settlor should pay  
4 less in settlement than if found liable after a trial; (4) the allocation of the settlement proceeds  
5 among plaintiffs; (5) the settlor's financial condition and insurance policy limits, if any; and (6)  
6 evidence of any collusion, fraud, or tortious conduct between the settlor and the plaintiffs aimed at  
7 making the non-settling parties pay more than their fair share. *Id.*

8 Having considered the relevant *Tech-Bilt* factors, the Court finds that the proposed  
9 Settlement was entered into in good faith pursuant to Section 877.6 for the following reasons.  
10 First, although the burden of proof lies with the party who asserts lack of good faith, *see* Cal. Civ.  
11 Proc. Code § 877.6(d), here no party disputes that the agreement between TDJV and Third-Party  
12 Plaintiffs was made in good faith.<sup>2</sup> Moreover, the amount TDJV has agreed to compensate Third-  
13 Party Plaintiffs is “within the reasonable range of the settling tortfeasor’s proportional share of  
14 comparative liability for the plaintiff’s injuries.” *Tech-Bilt*, 38 Cal. 3d at 499. TDJV agreed to  
15 pay Third-Party Plaintiffs six million dollars (\$6,000,000), and also agreed to perform and/or  
16 manage one million dollars (\$1,000,000) of work remediating the alleged construction-related  
17 barriers at Levi’s Stadium. *See* SA §§ 1.1-1.2. At minimum, the Court finds that this amount is  
18 not so far “out of the ballpark” as to be inconsistent with the equitable objectives of Section 877.6.  
19 *Tech-Bilt*, 38 Cal. 3d at 499-500. And finally, the Court is aware of no evidence of collusion,  
20 fraud, or tortious conduct between the parties in this case.

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23 <sup>2</sup> Non-party HNTB California Architects, Inc. f/k/a Howard, Needles, Tammen &  
24 Bergenhoff California Architects, P.C. (“HNTB”) filed a “Limited Opposition” in response to  
TDJV’s motion. Dkt. No. 455. There, HNTB says that it does not object to TDJV’s motion “[s]o  
25 long as the Court’s approval of the proposed settlement is conditioned on TDJV’s compliance”  
with TDJV’s prior representation that it will “forbear from bringing suit or seeking recovery from  
26 HNTB, the project architect.” *Id.* (citing Mot. at 6). The Court finds HNTB’s addendum  
unnecessary. As TDJV persuasively argues, the Limited Opposition (a) does not challenge the  
good faith nature of the Settlement Agreement; and (b) seeks unnecessary confirmation of an  
27 undisputed matter that is already squarely addressed by the Settlement Agreement itself. *See* Dkt.  
28 No. 457; *see also* SA § 1.3 (“TDJV and its SUBCONTRACTORS covenant not to sue HNTB or  
any subconsultant of HNTB on any claim that it has or could have asserted in the ACTION or  
otherwise in connection with the PROJECT.”).

1           The Court accordingly **GRANTS** the motion for good faith settlement determination. This  
2 Order **TERMINATES** Docket Nos. 456 and 466.

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4           **IT IS SO ORDERED.**

5           Dated: 2/10/2022

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7 HAYWOOD S. GILLIAM, JR.  
United States District Judge

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